Human rights : the role
of the Commonwealth

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HUMAN RIGHTS: THE ROLE OF THE COMMONWEALTH

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HUMAN RIGHTS: THE ROLE OF THE COMMONWEALTH

INTRODUCTION

The language of human rights has, in recent years, come to be commonly used in legal, policy and political vocabularies. Not only is this true at the domestic level, but human rights have also come to be an important factor in the area of international relations. This was not always the case.

Until World War II, human rights were not generally a part of the bilateral or multilateral relations of the countries of the world. States had rights and obligations; individuals did not. After World War II, in large part in reaction to the gross human rights abuses committed by the Axis Powers and as part of the de-colonization process taking place throughout the world, the language of human rights became an important part of international relations. This was most clearly demonstrated by the adoption of various Declarations and Covenants by the United Nations, by the development of regional human rights conventions and institutions in Europe, Africa and Latin America, and by some of the activities undertaken by the Commonwealth itself.

International human rights law imposes both domestic and international obligations on states. This constitutes a major departure from the general principles of international relations, which hold that for states to intervene in one another's affairs violates national sovereignty over internal matters. Under the post-war international human rights legal regime, states are entitled to denounce human rights abuses in other states. To do this, however, such states must ensure that their own human rights houses are in order. It is within this context that the U.N. has developed a number of mechanisms to ensure that states report on their compliance with international human rights norms. It has also created a

number of forums where, on a multilateral basis, the compliance of other states with international human rights norms may be considered.

There has in the post-World War II period been much debate as to what human rights are. In general terms, there have been two major poles in the debate: some contend that human rights are individual, while others contend that they are collective or group-based. Some have said that human rights are trans-cultural, while others have said they vary from culture to culture or people to people. Some have argued that civil and political rights should have primacy, while others have said that economic, social and cultural rights should have primacy. This is one of those eternal debates that will never be resolved to the satisfaction of all.(1) There is, however, one principle on which all seem to agree: that is, that gross violations of human rights are not internal matters but are subject to international denunciation under generally accepted international human rights norms.

The following discussion starts from the premise that international human rights norms require that domestic and international human rights issues be intimately associated. To engage in bilateral or multilateral human rights activity, a state must see that its domestic human rights house is in order. Thus the states that make up the Commonwealth may only denounce the human rights performance of other states if their own situation is reasonably consistent with international human rights norms. Similarly, the Commonwealth itself can only engage in actions relating to the human rights abuses of others if it, as an international body made up of member states, has done all it can do to ensure that its member states are in reasonable conformity with international human rights norms.

We have now reached the purpose for which this paper has been prepared: a discussion of ways in which the Commonwealth can safeguard and promote human rights both within its member states and among other states. The promotion of human rights must be done in adherence to

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(1) Different approaches to human rights are set out in: Paul Ricoeur (editor), *Philosophical Foundations of Human Rights*, UNESCO, Paris, 1986.

international human rights norms with a concern for careful procedure and practical results. The purpose of such human rights promotion is to alleviate injustice, unfairness and inequality.

Any efforts at promoting human rights domestically and internationally must aim at both protecting human rights and developing human rights. Human rights protection efforts must address immediate abuses in concrete ways - life, liberty and security of the person are often in some peril. Among the techniques for protecting human rights are public denunciation of abuses, boycotts or sanctions of the abusing state, and reducing or breaking off aid, diplomatic or other relations with that state. Human rights development addresses institutional, infrastructural, policy or expertise shortcomings within a particular state. It provides incremental solutions to long-term problems. This can be done by training and sensitizing those who are active in the legislative, judicial and executive branches of government in practical ways to ensure that international human rights norms are respected.(2)

This paper briefly describes the international human rights legal and institutional context within which the state members of the Commonwealth and, indeed, the Commonwealth itself must function, the role of the Commonwealth in addressing the Rhodesia/Zimbabwe and South Africa situations, the operations of the Human Rights Unit within the Commonwealth Secretariat, and the important human rights initiatives currently being undertaken by the Commonwealth.

INTERNATIONAL HUMAN RIGHTS CONTEXT

The United Nations adopted the Universal Declaration of Human Rights in 1948.(3) Since the Universal Declaration is not a treaty, it is not binding on members of the United Nations. It has, however, become a part of customary international law, and provided both

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(2) These issues are discussed in: Special Joint Committee on Canada's International Relations, *Report*, Ottawa, June 1986, p. 99-114.

(3) The Universal Declaration of Human Rights was adopted and proclaimed by General Assembly resolution 217A(iii) of 10 December 1948.

the inspiration and the starting point for the numerous international human rights documents that followed. Not all Commonwealth members are signatories of all of these documents but most members participate in some of them. The Universal Declaration of Human Rights and the international documents that were based upon it set out both a series of international human rights norms and a number of regimes for their implementation.

To return to the Universal Declaration of Human Rights itself, among the rights it proclaims are the right to life, liberty and security of the person, the right to privacy, the right to own property, and the freedoms of expression, movement, conscience, and peaceful assembly. As it is a declaration of general principles, there is no mechanism in place to ensure that it is respected.

As mentioned earlier, there has long been a philosophical debate between those who espouse individual rights and those who see collective rights as more important. More specifically, some see civil and political rights as being of prime importance, while others would give economic, social and cultural rights priority. Following the Universal Declaration of Human Rights, an attempt was made to develop a single, comprehensive human rights covenant. This turned out not to be possible because the differences in the two approaches to human rights were irreconcilable. Consequently, two major human rights covenants were developed.

Both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights[4] were signed in 1966 but did not come into force until 1976 when the required 35 countries had deposited instruments of ratification with the Secretary General of the United Nations. Unlike the Universal Declaration, the Covenants are treaties and hence binding on the members of the Commonwealth and other states which are parties to them.

The Covenant on Economic, Social and Cultural Rights provides that all peoples have the right to self-determination and requires state parties to take the necessary steps to ensure that the proclaimed

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(4) Adopted and opened for signature, ratification, and access by General Assembly resolution 2200A(xxi) of 16 December 1966.

rights are put into effect. Among the proclaimed rights are the right to employment, the right to favourable working conditions, the right to unionize, the right to social security, and the right to an adequate standard of living. Families, mothers and children are accorded special protection. The right of all to participate in cultural and scientific activities is also proclaimed.

The Covenant requires each state party to submit regular reports to the Secretary General of the United Nations indicating the progress made in implementing the rights proclaimed in that document. These reports are sent to the Commission on Human Rights, made up of elected state parties, which examines them, hears countries' representations, and makes recommendations to the state parties. Individuals with complaints under the Covenant do not have a right to take their cases to the Commission on Human Rights.

Between 1976 and 1984, the Commission on Human Rights, while Canada was an elected member, reviewed such Covenant violations as enforced or involuntary disappearances, states of siege, and summary or arbitrary executions. In addition, the Commission reviewed human rights violations in Chile, Guatemala, El Salvador, Afghanistan, and Iran. Canada was re-elected in 1988 for a term which began in 1989.(5)

The International Covenant on Civil and Political Rights proclaims the right to self-determination of peoples and requires state parties to do what is necessary to ensure that the rights proclaimed in it are available to all. Torture, slavery, and cruel or inhumane treatment or punishment are prohibited by the Covenant. A number of legal rights are to be made available to accused and imprisoned persons. A number of democratic rights in relation to the electoral process are set out, as are a number of rights to belief and expression.

A Human Rights Committee made up of 18 experts named in their own capacity by state parties exists under the Covenant. The Covenant requires state parties to report regularly on its implementation

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(5) Department of External Affairs, *Annual Report 1985-86*, p. 25; *Annual Report 1988-89*, p. 28.

to the Secretary General of the United Nations. The Secretary General transmits these reports to the Human Rights Committee, which hears state parties on them, and makes recommendations.

The International Covenant on Civil and Political Rights is unique in that, by way of an Optional Protocol,(6) individuals may complain directly to the Human Rights Committee about violations of the Covenant by state parties. An individual must exhaust all legal remedies available domestically before such a complaint may be lodged. Canada is one of a handful of state parties that have ratified and are bound by the Optional Protocol. Approximately 24 complaints about Canada have been lodged with the Human Rights Committee.(7)

The Universal Declaration of Human Rights and the two International Covenants are the most important of the galaxy of United Nations international human rights legal instruments. There are several dozen other covenants, conventions and International Labour Organization conventions to which members of the Commonwealth, and many other states, are party. Most of them amplify and elaborate upon the international human rights norms set out in the Universal Declaration and the two International Covenants. Among the most important of these international human rights documents are the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment and the Convention relating to the Status of Refugees.(8)

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(6) Adopted and opened for signature, ratification, and accession by General Assembly resolution 2200A(xxi) of 16 December 1966. Entry into force in March 1976.

(7) These complaints and the decisions of the Human Rights Committee in relation to them can be found in the annual editions of the *Canadian Human Rights Yearbook*.

(8) A list of the two dozen or so international human rights documents by which Canada is bound may be found at: Maxwell Cohen, "Towards a Paradigm of Theory and Practice: The Canadian Charter of Rights and Freedoms - International Law Influences and Interactions," *Canadian Human Rights Yearbook* 47, 1986 at p. 72-73.

Approximately 40% of the members of the Commonwealth have acceded to this last Convention.

Although these initiatives have been noble of purpose and have clearly enunciated international human rights norms, they have not been truly effective in protecting human rights. This is because the enforcement mechanisms which have been set up are advisory only - their decisions are not binding on state parties. The process for dealing with human rights complaints under these international human rights covenants and conventions is also cumbersome and slow-moving. Finally, the state parties to these international human rights documents are from all parts of the world and have different forms of government; they do not all share the same degree of commitment to human rights and their effective enforcement.

COMMONWEALTH ACTION

1. Rhodesia

Although the Commonwealth does not have in place a legal regime for addressing human rights issues, this has not prevented it from doing so effectively in particular situations. *Ah hoc* interventionist approaches were taken to the issues raised by the Rhodesian/Zimbabwe situation in the 1960s and 1970s and by the situation in South Africa in the past several years. One *ad hoc* international human rights intervention by the members of the Commonwealth was ultimately successful while the fate of the other initiative remains to be determined.

In 1965, the minority Ian Smith government in Rhodesia (as it was then called) issued a unilateral declaration of independence from Great Britain of which it had until then been a dependency. Throughout the 1960s and the 1970s, a number of diplomatic and trade measures were taken against Rhodesia by both the United Nations and the members of the Commonwealth. These measures were taken because the white minority in Rhodesia had taken pre-emptive action which effectively frustrated the democratic rights of the black majority to fully participate in governing their country. These measures were not effective in concrete terms for many years, but did keep the pressure on Rhodesia and ensured that the

issue of minority government pursuant to a unilateral declaration of independence was kept in the foreground of world attention.

The situation changed dramatically in April 1979 when elections were held and a democratically elected government headed by Abel Muzorewa came to power. Many African countries were concerned about Great Britain's wish to drop economic sanctions against Rhodesia because of this change of government. These countries felt that the Muzorewa government was a puppet of the white minority, which had drafted the new constitution giving itself control of the public service, the police and the judiciary for another decade.

This situation was discussed extensively by Commonwealth heads of government at their August 1979 meeting in Zambia. The Commonwealth conference drafted an agreement that involved a ceasefire, a new constitution with guarantees of genuine majority rule, an all-party conference and new elections under British supervision for Rhodesia. Although the Muzorewa government initially opposed this proposal, it eventually acceded to it. Consequently, the Muzorewa government was dissolved, a British governor took over the governance of Rhodesia, a ceasefire was declared, a new constitution was devised and elections took place leading to majority rule in what came to be known as Zimbabwe.(9)

In addition to the compromise scheme for bringing majority rule to Zimbabwe, the Commonwealth heads of government in August 1979 also adopted the Lusaka Declaration of the Commonwealth on Racism and Racial Prejudice. The Lusaka Declaration expressed an abhorrence of all forms of racism and racist policies. The Commonwealth heads of government committed themselves to combatting all forms of intolerance and especially apartheid.(10)

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(9) See: "Canada's Experience in Applying Sanctions Against Rhodesia" in David Johansen, "Legislative Sanctions Against South Africa," Research Branch, Library of Parliament, 17 April 1986, p. 12-19.

(10) *Canadian Annual Review of Politics and Public Affairs,* 1979, p. 227.

2. South Africa

In recent years, the issue of apartheid in South Africa has gained considerable prominence in world affairs. Almost since it was institutionalized as an integral part of the political fabric in South Africa, apartheid has been universally denounced throughout the world. There have been numerous United Nations resolutions and many other attempts at undermining apartheid. The Commonwealth has been very active in encouraging anti-apartheid activity. The 1979 Lusaka Declaration and the resolution of the Zimbabwe situation gave an impetus to the Commonwealth's anti-apartheid actions.

In 1977, the Commonwealth heads of government met in Britain and issued the Gleneagles Declaration. By this Declaration, they agreed to discourage by all practical means possible all sporting contacts with South Africa for so long as apartheid remained in place. In October 1985, the Commonwealth heads of government met in Nassau and agreed, over strong resistance from Great Britain, to impose a number of economic and trade measures against South Africa. They also agreed to appoint a Group of Eminent Persons who would travel to Southern Africa and report back on the situation there within several months.

The Eminent Persons Group presented its Report to the Commonwealth in June 1986.(11) The Report graphically described the perilous situation in South Africa and expressed a fear that if steps toward democratic rule were not begun shortly, chaos and bloodshed would result. The Report urged that maximum economic measures be applied to South Africa by the Commonwealth.

In August 1986, a Commonwealth summit meeting on the Eminent Persons Group Report was held in London. In attendance were the heads of government of Australia, the Bahamas, Great Britain, India, Zambia, Zimbabwe and Canada. All governments, with the exception of Great Britain, agreed to implement the next series of economic sanctions agreed to at Nassau in October 1985. At the Commonwealth Heads of Government meeting in

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(11) Commonwealth Secretariat, *Mission to South Africa: The Commonwealth Report*, Report of the Commonwealth Group of Eminent Persons Appointed Under the Nassau Accord on Southern Africa, London, 1986.

October 1987, members agreed to create a Committee of Commonwealth Foreign Ministers to monitor the situation in South Africa. The Committee has since met five times, reaffirming the effectiveness of sanctions, but leaving the decision as to whether there should be new trade sanctions up to the Heads of Government. In 1989, the Heads announced that new sanctions would not be imposed for six months, pending proof of the South African commitment to reform. Subsequently, however, Mrs. Thatcher disassociated Britain from this statement and called for sanctions to be removed following the release of Nelson Mandella.(12) At the May 1990 meeting in Abuja, Nigeria, the Commonwealth Committee of Foreign Ministers issued the Abuja Declaration reaffirming the Commonwealth position of maintaining current sanctions until the start of constitutional negotiations in South Africa. Throughout this period, disagreements between Great Britain and other members of the Commonwealth on how to confront apartheid in South Africa have put great strains on the fabric of the Commonwealth.

What conclusions can be drawn from the actions of the Commonwealth in relation to the Zimbabwe and South Africa situations? Both situations involved a powerful minority's gross violations of the human rights of a majority. It is doubtful if a mechanism other than one based on an *ad hoc* approach would work in such situations. The Zimbabwe situation appears to have been reasonably resolved because there were effective pressures within the country (both military and political) as well as external pressures. By the time the situation in Zimbabwe was addressed by the Commonwealth, there had been 15 years for the situation to mature and to present some possibility of resolution. South Africa is not yet at this stage.

An important factor that is different in these two cases is that Britain and the rest of the Commonwealth were unanimous on how to deal with Zimbabwe. Such is not the case in relation to South Africa: indeed, the resultant strains have threatened the continued viability of the Commonwealth.

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(12) See: Michel Rossignol, "South Africa: The Struggle for Reform," Research Branch, Library of Parliament, Current Issue Review 87-12.

Ad hoc approaches, such as those described here, may be appropriate for situations like those in Zimbabwe and South Africa but not for all types of human rights promotion. The remainder of this paper sets out other ideas that would allow the Commonwealth and its members to safeguard human rights and hence meet international obligations.

3. The Singapore Declaration

The Commonwealth is a voluntary grouping of states. Membership does not impose legal duties and there is no formal constitutional structure. Nevertheless, members of the Commonwealth agree on certain principles, which were spelled out at the Heads of Governments Meeting in Singapore in 1971. Human rights are central to the Singapore Declaration, as the following extracts illustrate:

> ...
> We believe in the liberty of the individual, in equal rights for all citizens regardless of race, colour, creed or political belief, and in their inalienable right to participate by means of free and democratic political processes in framing the society in which they live. We therefore strive to promote in each of our countries those representative institutions and guarantees for personal freedom under the law that are our common heritage.
>
> We recognize racial prejudice as a dangerous sickness threatening the healthy development of the human race and racial discrimination as an unmitigated evil of society. Each of us will vigorously combat this evil within our own nation. No country will afford to regimes which practise racial discrimination assistance which in its own judgment directly contributes to the pursuit or consolidation of this evil policy. We oppose all forms of colonial domination and racial oppression and are committed to the principles of human dignity and equality. We will therefore use all our efforts to foster human equality and dignity everywhere and to further the principles of self-determination and non-racialism.

4. The Human Rights Unit Within the Commonwealth Secretariat

In 1981, the Commonwealth Heads of Government, meeting in Melbourne, decided that a Human Rights Unit should be established within the Commonwealth Secretariat. This unit was set up in 1985 as a part of

the International Affairs Division of the Secretariat.(13) Its mandate is to promote human rights among Commonwealth countries by means of education, information, and the provision of technical expertise. It also plays a role in ensuring that human rights are adequately considered by other branches of the Secretariat. The investigation of human rights violations and the enforcement of rights are not part of the mandate. Nor are they likely to become part of the mandate of the Unit, the Secretariat or a separate body charged with that responsibility, despite frequent suggestions that human rights promotion should develop in that fashion within the Commonwealth.

To fulfill its mandate, the Unit has commissioned various expert studies, such as The Right to Food, the International Human Rights Covenants, the Right to Development, and Human Rights and Development. It also publishes Human Rights Update, a quarterly newsletter which facilitates communication among Commonwealth human rights bodies.(14) The Unit also sponsored the publication of a human rights manual, *Human Rights Training for Public Officials,* which was published in February 1990. The manual was commissioned to mark the 40th anniversary of the Universal Declaration of Human Rights. The research and writing of the manual were carried out by a team of researchers under the auspices of the Human Rights Research and Education Centre at the University of Ottawa.

The Manual is a practical document designed to serve as a tool for training government officials in human rights promotion and protection. It provides an overview of the field of human rights and the principal international human rights documents, and then proceeds to discuss the major human rights themes: individual and collective rights, equality and discriminization, the rights of minorities and aboriginals, refugees, the rights of the child and issues relating to the environment and peace. Suggested readings accompany each topic.

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(13) Margaret P. Doxey, *The Commonwealth Secretariat and the Contemporary Commonwealth*. Macmillan, 1989, p. 104.

(14) Report of the Commonwealth Secretary-General, 1989, p. 46.

The Human Rights Unit has also prepared "Accession Kits" to assist Commonwealth countries to accede to the International Convention on the Elimination of All Forms of Discrimination against Women, and to the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights.(15)

Finally, the Human Rights Unit organizes conferences to promote human rights. For example, in 1988 the Unit assisted in sponsoring a Judicial Colloquium in Bangalore to explore the topic "Developing Human Rights Jurisprudence: The Domestic Application of International Human Rights Norms." Senior judges from Asia and the Pacific attended and formulated the principles which have come to be known as The Bangalore Principles. These ten principles asserted the importance of fundamental rights and freedoms and noted with approval the tendency of the judiciary in some common law countries (in which international conventions do not automatically become domestic law) to apply international human rights norms in deciding local cases. Where the domestic law was clear and did not permit a judge to apply the international norm, the principles state that the court should draw the inconsistency or breach to the attention of the appropriate authorities. The principles also urged that judges, practising lawyers and law enforcement officials receive ongoing training in the international dimension of human rights.

A follow-up conference, attended by most of the Chief Justices of African Commonwealth countries, was held in Harare in 1989. The participants approved the Harare Declaration on Human Rights, which reaffirmed The Bangalore Principles and the importance of incorporating international human rights norms into the domestic laws of all nations. They also emphasized the necessity to educate judges, lawyers and law enforcement officials in human rights developments and recognized the role that non-governmental organizations can play.

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(15) *Supra*, note 13.

5. The 1989 Heads of Government Meeting in Kuala Lumpur

The 1989 meeting of the Commonwealth Heads of Government produced two significant initiatives in the human rights field.(16) The first was the establishment of a High Level Appraisal Group to assess the priorities of the Commonwealth for the 1990s. Canadian Prime Minister Mulroney is a member of this small representative group, which is chaired by the Prime Minister of Malaysia. It is hoped and anticipated that consideration of human rights in all its different dimensions will play an important part in the future of the Commonwealth as viewed by this group.

The second initiative was the establishment of a Working Group of Officers in the field of human rights. Eight experts, including a representative from Canada, comprise the committee, set up to review Commonwealth cooperation in this area. The committee's report, published in July 1990, made recommendations on education, training and technical assistance to member countries.

CONCLUSION

This paper has outlined in general terms the various elements of the international human rights obligations of the Commonwealth and its members. Human rights norms as they have evolved through United Nations human rights documents were set out. Specific Commonwealth actions relating to human rights were reviewed in terms of *ad hoc* responses to specific situations (Rhodesia and South Africa), the human rights orientation of the Singapore Declaration, the mandate of the Human Rights Unit within the Secretariat and current initiatives arising from the Heads of Government Meeting in Kuala Lumpur in 1989. The recent history and projected future work of the Commonwealth indicate that human rights will continue to be a matter of significant concern for the Commonwealth in the years ahead.

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(16) Information received from the Department of External Affairs, October, 1990.

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INTRODUCTION

The language of human rights has, in recent years, come to be commonly used in legal, policy and political vocabularies. This is true not only at the domestic level, but also in the area of international relations, where human rights and their linkage to domestic democratic processes and international economic and political development have also come to be important. This was not always the case.

Until World War II, human rights issues were not generally a part of the bilateral or multilateral relations of the countries of the world. States had rights and obligations; individuals did not. After World War II, in large part in reaction to the gross human rights abuses committed by the Axis Powers and as part of the de-colonization process taking place throughout the world, the language of human rights became an important part of international relations. This was most clearly demonstrated by the adoption of various Declarations and Covenants by the United Nations, by the development of regional human rights conventions and institutions in Europe, Africa and Latin America, and by some of the activities undertaken by the Commonwealth itself.

International human rights law imposes both domestic and international obligations on states. This constitutes a major departure from the general principles of international relations, which hold that for states to intervene in one another's affairs violates national sovereignty over internal matters. Under the post-war international human rights legal regime,

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* Much of this paper is based on an earlier version prepared by Philip Rosen and Margaret Young, Law and Government Division, Research Branch.

states are entitled to denounce human rights abuses in other states. To do this, however, such states must ensure that their own human rights houses are in order. It is within this context that the U.N. has developed a number of mechanisms to ensure that states report on their compliance with international human rights norms. It has also created a number of forums where, on a multilateral basis, other states' compliance with such norms may be considered.

In the post-World War II period, there has been much debate as to what human rights are. The concept of "rights" is as old as the Western tradition of political philosophy, law and government. An ongoing major debate has been whether rights are "natural" and inalienable (i.e., possessed by human beings simply by virtue of their humanity) or created and therefore, removable or alterable (i.e., enacted by social and civil contracts, by constitutions, etc.). The prevailing contemporary notion of "human rights" and the one that has been universally accepted in international law flows from an acceptance of "natural rights" as expounded by the great philosophers (such as John Locke) who formed part of the movement towards western liberal democracy.(1) In general terms, there have been two major poles in contemporary debate on the nature of human rights: some contend that human rights are individual, while others contend that they are collective or group-based. Some have said that human rights are trans-cultural, while others have said they vary from culture to culture or people to people. Some have argued that civil and political rights should have primacy, while others have said that economic, social and cultural rights should do so. These are eternal disputes that will never be resolved to the satisfaction of all.(2)

There is, however, one agreement that seems to be generally accepted; that is, that gross violations of human rights are not internal matters but are subject to international denunciation according to generally accepted international human rights norms. This conclusion is in line with the accepted belief that human rights are a special class of moral rights that are fundamental and inalienable and cannot be overridden by any other rights. Understanding of human rights therefore tends to be expansive and proactive; inclusive rather than exclusive.

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(1) For a fuller discussion, see Jack Donnelly, *Universal Human Rights in Theory and Practice*, Ithaca and London, 1989.

(2) Different approaches to human rights are set out in: Paul Ricoeur (editor), *Philosophical Foundations of Human Rights*, UNESCO, Paris, 1986.

They are deemed to create a right to something - an entitlement that becomes most obvious when they are being denied or ignored. Human rights demands are addressed to society at large and to its governing institutions. This is the case whether demands are for "negative" entitlements, where government is asked to restrain its actions, or "positive" entitlements, where government is called upon to act.

Most claims for human rights have both a positive and a negative aspect. Without a proper court system provided for by the state, rights to personal privacy and property would not be safe. Alternatively, civil and political rights might be denied to people who were poor or disqualified because of their dependence on public assistance. In theory at least, contemporary democratic governments have recognized their responsibility to work for conditions under which all citizens can realize their human rights.

This paper, then, starts from the premise that international human rights norms require an intimate association between domestic and international human rights issues. To engage in bilateral or multilateral human rights activity, a state must ensure that its own house is in order. Thus, the states that make up the Commonwealth may denounce the human rights performance of other states only if their own situation is reasonably consistent with international human rights norms. Similarly, the Commonwealth itself can engage in actions relating to the human rights abuses of others only if it, as an international body made up of member states, has done all it can do to ensure that these member states are in reasonable conformity with international human rights norms.

We have now reached the purpose for which this paper was prepared: to discuss ways in which the Commonwealth has contributed to and can safeguard and promote democracy and human rights both within its member states and among other states. The promotion of human rights must be done in adherence to international human rights norms with a concern for careful procedure and practical results. The purpose of such human rights promotion is to alleviate injustice, unfairness and inequality.

Any efforts at promoting human rights domestically and internationally must aim at both protecting human rights and developing human rights within a democratic framework. Human rights protection must address immediate abuses in concrete ways - life, liberty and security of the person are often in some peril. Among the techniques for protecting human

rights are public denunciation of abuses, boycotts or sanctions of the abusing state, and reducing or breaking off aid, diplomatic or other relations with that state. Human rights development addresses institutional, infrastructural, policy or expertise shortcomings within a particular state. It provides incremental solutions to long-term problems. This can be done by training and sensitizing those who are active in the legislative, judicial and executive branches of government in practical ways to ensure that international human rights norms are respected.[3]

THE CONTEXT: INTERNATIONAL HUMAN RIGHTS

The United Nations adopted the Universal Declaration of Human Rights in 1948.[4] Since the Universal Declaration is not a treaty, it cannot bind the member states of the United Nations. It has, however, become a part of customary international law, and provided both the inspiration and the starting point for the numerous international human rights documents that followed. Not all Commonwealth members are signatories of all of these documents but most members participate in some of them. The Universal Declaration of Human Rights and the international documents that were based upon it set out both a series of international human rights norms and a number of regimes for their implementation.

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others would give priority to economic, social and cultural rights. Following the Universal Declaration of Human Rights, an attempt was made to develop a single, comprehensive human rights covenant. This turned out to be impossible because the negotiators were unable to reconcile the differences in the two approaches to human rights. Consequently, two major human rights covenants were developed - one for each of the two types of human rights.

Both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights[5] were signed in 1966 but did not come into force until 1976 when, as required, 35 countries had deposited instruments of ratification with the Secretary General of the United Nations. Unlike the Universal Declaration, the Covenants are treaties and hence binding on the members of the Commonwealth and other states that are parties to them.

The Covenant on Economic, Social and Cultural Rights provides that all people have the right to self-determination and requires state parties to take the necessary steps to ensure that the proclaimed rights are put into effect. Among these rights are the right to employment, the right to favourable working conditions, the right to unionize, the right to social security, and the right to an adequate standard of living. Families, mothers and children are accorded special protection. The right of all to participate in cultural and scientific activities is also proclaimed.

The Covenant requires each state party to submit regular reports to the Secretary General of the United Nations indicating the progress made in implementing the rights proclaimed in that document. These reports are sent to the Commission on Human Rights, made up of elected state parties, which examines them, hears countries' representations, and makes recommendations to the state parties. Individuals with complaints under the Covenant do not have a right to take their cases to the Commission on Human Rights.

Between 1976 and 1984, the Commission on Human Rights, while Canada was an elected member, reviewed violations of the Covenant such as enforced or involuntary disappearances, states of siege, and summary or arbitrary executions. During that period, the

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(5) Adopted and opened for signature, ratification, and access by General Assembly resolution 2200A(xxi) of 16 December 1966.

Commission also reviewed human rights violations in Chile, Guatemala, El Salvador, Afghanistan, and Iran. Canada was re-elected in 1988 for a term which began in 1989.(6)

The International Covenant on Civil and Political Rights proclaims the right to self-determination of peoples and requires state parties to do what is necessary to ensure that the rights proclaimed in it are available to all. Torture, slavery, and cruel or inhumane treatment or punishment are prohibited by the Covenant. A number of legal rights are to be made available to accused and imprisoned persons. A number of democratic rights in relation to the electoral process are set out, as are a number of rights to belief and expression.

A Human Rights Committee, made up of 18 experts named in their own capacity by state parties, exists under the Covenant. The Covenant requires state parties to report regularly on its implementation to the Secretary General of the United Nations, who transmits the reports to the Human Rights Committee, which hears state parties on them, and makes recommendations.

The International Covenant on Civil and Political Rights is unique in that, by way of an Optional Protocol,(7) individuals may complain directly to the Human Rights Committee about violations of the Covenant by state parties. An individual must exhaust all domestic legal remedies available before such a complaint may be lodged. Canada is one of a handful of state parties that have ratified and are bound by the Optional Protocol. Approximately 24 complaints have been lodged with the Human Rights Committee about Canada.(8)

The Universal Declaration of Human Rights and the two International Covenants are the most important of the United Nations international human rights legal instruments. There are several dozen other covenants, conventions and International Labour Organization conventions to which members of the Commonwealth, and many other states, are party. Most of them amplify and elaborate upon the international human rights norms set out in the Universal

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(6) Department of External Affairs, *Annual Report 1985-86*, p. 25; *Annual Report 1988-89*, p. 28.

(7) This was adopted and opened for signature, ratification, and accession by General Assembly resolution 2200A(xxi) of 16 December 1966 and came into force in March 1976.

(8) These complaints and the decisions of the Human Rights Committee in relation to them can be found in the annual editions of the *Canadian Human Rights Yearbook*.

Declaration and the two International Covenants. Among the most important of these international human rights documents are the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment and the Convention relating to the Status of Refugees.(9) Approximately 40% of the members of the Commonwealth have acceded to this last Convention.

While these initiatives have expressed noble sentiments and have clearly enunciated international human rights norms, they have not been truly effective in protecting human rights. This is because the enforcement mechanisms are advisory only - their decisions are not binding on state parties. As well, the process for dealing with human rights complaints under these international human rights covenants and conventions is cumbersome and slow-moving. Finally, the state parties to these international human rights documents are from all parts of the world and have different forms of government; they do not all share the same degree of commitment to human rights and their effective enforcement.

EXAMPLES OF COMMONWEALTH ACTION

Although the Commonwealth does not have in place a legal regime for addressing human rights issues, this has not prevented it from acting effectively in particular situations. *Ad hoc* interventionist approaches were taken to the issues raised by the Rhodesian/Zimbabwe situation in the 1960s and 1970s and by the situation in South Africa in the past several years. One *ad hoc* international human rights intervention by the members of the Commonwealth was ultimately successful while the other is having a continued positive impact.

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(9) A list of the two dozen or so international human rights documents by which Canada is bound may be found at: Maxwell Cohen, "Towards a Paradigm of Theory and Practice: The Canadian Charter of Rights and Freedoms - International Law Influences and Interactions," (1986) *Canadian Human Rights Yearbook* 47 at p. 72-73.

A. Rhodesia

In 1965, the minority Ian Smith government in Rhodesia (as the country was then called) issued a unilateral declaration of independence from Great Britain, of which it was a dependency. The white minority in Rhodesia had taken pre-emptive action which effectively frustrated the democratic rights of the black majority to fully participate in governing their country. Throughout the 1960s and the 1970s, a number of diplomatic and trade measures were taken against Rhodesia by both the United Nations and the members of the Commonwealth. These measures were not effective in concrete terms for many years, but did keep international pressure on Rhodesia and ensured that the issue of minority government pursuant to a unilateral declaration of independence was kept in the foreground of world attention.

The situation changed dramatically in April 1979 when Rhodesian elections gave power to a democratically elected government headed by Abel Muzorewa. Many African countries were concerned about Great Britain's subsequent wish to drop economic sanctions against Rhodesia. These countries felt that the Muzorewa government was a puppet of the white minority which had drafted the new constitution giving the minority control of the public service, the police and the judiciary for another decade.

Commonwealth heads of government at their August 1979 meeting in Zambia drafted an agreement that involved a ceasefire, a new constitution with guarantees of genuine majority rule, an all-party conference and new elections under British supervision for Rhodesia. Although the Muzorewa government initially opposed this proposal, it eventually acceded to it. Consequently, the Muzorewa government was dissolved, a British governor took over the governance of Rhodesia, a ceasefire was declared, a new constitution was devised and elections took place leading to majority rule in what came to be known as Zimbabwe.[10]

In addition to its compromise scheme for bringing majority rule to Zimbabwe, the Commonwealth heads of government in August 1979 also adopted the Lusaka Declaration of the Commonwealth on Racism and Racial Prejudice. The Lusaka Declaration expressed an

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(10) See: Canada's Experience in Applying Sanctions Against Rhodesia," in David Johansen, "Legislative Sanctions Against South Africa," Research Branch, Library of Parliament, 17 April 1986, p. 12-19.

abhorrence of all forms of racism and racist policies. The Commonwealth heads of government committed themselves to combatting all forms of intolerance and especially apartheid.[11]

B. South Africa

In recent years, the issue of apartheid in South Africa has gained considerable prominence in world affairs. From the time that it was institutionalized as an integral part of the political fabric in South Africa, this system of racial discrimination and human rights violations has been universally denounced throughout the world. Both at the United Nations and elsewhere, many attempts have been made to undermine apartheid and to bring about a democratic regime. For its part, the Commonwealth has been very active in encouraging anti-apartheid activity. After the Lusaka Declaration in 1979 and the resolution of the Zimbabwe situation, the Commonwealth's anti-apartheid actions gained impetus and effect.

The movement for sanctions moved forward from 1977, when the Commonwealth heads of government issued the Gleneagles Declaration which agreed to discourage all sporting contacts with South Africa for as long as apartheid remained in place. In October 1985, the Commonwealth heads of government who met in Nassau agreed, over strong resistance from Great Britain, to impose a number of economic and trade measures against South Africa. They also concurred in the appointment of a Group of Eminent Persons who would travel to Southern Africa and report back on the situation there within several months. The Eminent Persons Group presented its Report to the Commonwealth in June 1986.[12] The Report graphically described the South African situation and expressed a fear that if steps toward democratic rule were not begun, chaos and bloodshed would ensue. The Report urged that the Commonwealth apply maximum economic sanctions to South Africa. In August 1986, a Commonwealth summit meeting to discuss the Eminent Persons Group Report brought together the heads of government of Australia, the Bahamas, Great Britain, India, Zambia, Zimbabwe and Canada. All, with the

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(11) *Canadian Annual Review of Politics and Public Affairs*, 1979, p. 227.

(12) Commonwealth Secretariat, *Mission to South Africa: The Commonwealth Report*, Report of the Commonwealth Group of Eminent Persons Appointed Under the Nassau Accord on Southern Africa, London, 1986.

exception of Great Britain, agreed to implement the next series of economic sanctions previously agreed to at Nassau in October 1985. The strain within the Commonwealth over the best means of dealing with the South African situation did not lessen during the following years. At the Commonwealth Heads of Government meeting in October 1987, all members, except Britain, agreed that sanctions had proven an effective means of applying pressure on South Africa and ought to be maintained. All members, except Britain, approved greater assistance to South Africa's neighbouring states as well as the creation of a committee of Commonwealth foreign ministers chaired by Canadian Secretary of State for External Affairs, Joe Clark, which would oversee reaction to developments in South Africa.

At four meetings held prior to 1990, the Committee of Foreign Ministers reaffirmed the commitment to sanctions which was based on an assessment of their effectiveness. Although they discussed new sanctions at the fourth meeting, in August 1989, the Committee left the decision to impose these to the Commonwealth Heads of Government meeting in October in Kuala Lumpur. The Heads of Government reaffirmed the Commonwealth position but postponed imposing new trade restrictions for six months, as a means of allowing the South African government to prove its commitment to reform.

The Commonwealth governments believed it was necessary to maintain sanctions even after President F.W. de Klerk announced his reforms in February 1990, lifted the ban on the African National Congress, and released Nelson Mandela from prison. Although Britain announced later that month that it would not prohibit new investment in South Africa, the Commonwealth Committee of Foreign Ministers issued a statement, known as the Abuja Commitment, at its meeting in Abuja, Nigeria in mid-May, reaffirming the Commonwealth's intention to maintain sanctions. At the same time, the Committee expressed support for measures to pave the way for constitutional negotiations between the black and white communities in South Africa. Despite de Klerk's announcement on 1 February 1991 that he would repeal remaining discriminatory laws, the Commonwealth Committee did not propose to lift sanctions at a special meeting of Foreign Ministers on 16 February. After considering the issue at a meeting in New Delhi on 13-14 September 1991, the Committee agreed to recommend that the Heads of Government remove some of the sanctions when they met the following month. Nonetheless, the foreign ministers agreed that the economic and trade sanctions should be

retained until all parties in South Africa could fully participate in negotiations. Financial sanctions should be maintained until the text of a new constitution was agreed upon.

When they met in Harare, Zimbabwe on 16-22 October 1991, the Commonwealth Heads of Government agreed, with the support of Nelson Mandela, to accept the Foreign Ministers' recommendation that certain Commonwealth sanctions should be lifted. The members of the Commonwealth welcomed the mandate for continued reform given by the white minority to the de Klerk government in a referendum on 17 March 1992; however, they indicated that some sanctions would be maintained until an interim government is in place or transitional arrangements are established.

C. Commonwealth Parliamentarians, Southern Africa and Other *Ad Hoc* Efforts

Throughout the years of devising effective ways to promote the institution of democratic reforms and respect for human rights in South Africa, the Canadian government's position has been strengthened by the support of parliamentarians. This support has been expressed by means of reports to Parliament like that of the Special Joint Committee of the Senate and the House of Commons on Canada's International Relations in June 1986 and that of the Standing Committee of the House of Commons on Human Rights in July 1986. Both of these exhorted the Canadian government to intensify economic and political pressure on the South African government. In his address to both Houses of Parliament on 18 June 1990, Nelson Mandela called on Canada to maintain its sanctions against South Africa in order to keep the pressure on the South African government.[13]

Most recently, in June 1992, the Sub-Committee on Development and Human Rights of the Standing Committee on External Affairs and International Trade reported on its hearings on South and Southern Africa. The report emphasized that reason for hope in the region and the collapse of the legal basis of apartheid should not lessen the effort for democratization. The Sub-Committee urged the Canadian government to continue to show

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(13) For a complete discussion of the evolving South African situation, see: Michel Rossignol, "South Africa: The Struggle for Reform," Research Branch, Library of Parliament, Current Issue Review 87-12.

leadership in encouraging economic development and growth in human resource capacity and in reinforcing democratic society.

Throughout the Commonwealth, parliamentarians have demonstrated a desire to promote real democracy in South Africa but their course of action has not always been clear. Previous Commonwealth Parliamentary Association discussions have provided a forum for discussion and many participants have concluded that such talking and thinking about the problems in southern Africa can aid in keeping the pressure on the South African government to continue reforms. Recognizing the value of economic sanctions in promoting desirable change, Commonwealth parliamentarians have lobbied their respective governments to impose and to maintain economic sanctions and have educated the public about their value. During the current climate, when the South African government is prepared to discuss the means of creating a more democratic society, Commonwealth parliamentarians may continue to maintain their own pressure on their governments to find ways to promote constructive measures. Commonwealth parliamentarians may also assist the South African negotiations by participating and supporting projects that promote dialogue and by providing research and constitutional expertise.

In another form of *ad hoc* scrutiny and protection of democratic systems, the Commonwealth has provided groups to observe elections among its members. In Canada, Members of Parliament representing all three major parties (along with officials from Elections Canada) are often requested to serve as part of official observer teams. A Commonwealth government, with the acquiescence of the major opposition groups, may request a Commonwealth observer mission. A Commonwealth Secretariat planning mission will confirm that the presence of observers is acceptable to all political parties. During one such recent Commonwealth exercise, the observers spent nearly two weeks in Zambia in October 1991 to monitor the various phases of the elections. Their work included visits to polling districts, meetings with local elections officers, inspections of arrangements for the poll and meetings with local candidates and their support teams as well as members of the public. The observers then published the results of their findings. To date, Commonwealth observer groups have monitored elections in Malta, British Guiana, Mauritius, Gibraltar, Zimbabwe, Uganda, Namibia, Bangladesh, Zambia and Malaysia.

D. Conclusion

What conclusions can be drawn from the actions of the Commonwealth in relation to the situation in Zimbabwe and South Africa? Both situations involved the denial of democracy and gross violations of the human rights of a majority by a powerful minority. It is doubtful if other than an *ad hoc* approach would work in such situations. The Zimbabwe situation appears to have been reasonably resolved because there were effective pressures within the country (both military and political) as well as external pressures. By the time the situation in Zimbabwe was addressed by the Commonwealth, there had been 15 years for the situation to mature and to present some possibility of resolution. While the situation in South Africa is evolving rapidly, it is not yet at this stage.

The success *of ad hoc* approaches to promote democracy and to protect human rights depends on a united stand by the members of the Commonwealth. The approaches used in Zimbabwe and South Africa succeeded only because the Commonwealth countries were able to take a united stand. In fact, the differences between the Zimbabwean and the South African situation illuminate the importance of this unity. In the case of Zimbabwe, unity was not an issue but in the South African situation, where Britain disagreed with the rest of the members over the issue of maintaining sanctions, the resultant strains, at one juncture, threatened the continued viability of the Commonwealth. As for monitoring elections, the need for all parties in a particular country to agree that Commonwealth Observer Groups may be involved in all aspects of election practice may present difficulties.

EVOLVING SYSTEMS TO PROMOTE HUMAN RIGHTS AND DEMOCRACY

The *ad hoc* approaches that have worked in alleviating human rights abuses and in promoting democratic development in Southern Africa, have highlighted the need for further efforts to develop systems within the Commonwealth to ensure a more uniform and consistent respect for human rights by all member states.

A. The Singapore Declaration

The Commonwealth is a voluntary grouping of states. Membership does not impose legal duties and there is no formal constitutional structure. Nevertheless, members of the Commonwealth agree on certain principles, which were spelled out at the Heads of Government meeting in Singapore in 1971. Human rights are central to the Singapore Declaration, as illustrated in the declaration of the Heads of Government:

> We believe in the liberty of the individual, in equal rights for all citizens regardless of race, colour, creed or political belief, and in their inalienable right to participate by means of free and democratic political processes in framing the society in which they live. We therefore strive to promote in each of our countries those representative institutions and guarantees for personal freedom under the law that are our common heritage.
>
> We recognize racial prejudice as a dangerous sickness threatening the healthy development of the human race and racial discrimination as an unmitigated evil of society. Each of us will vigorously combat this evil within our own nation. No country will afford to regimes which practise racial discrimination assistance which in its own judgment directly contributes to the pursuit or consolidation of this evil policy. We oppose all forms of colonial domination and racial oppression and are committed to the principles of human dignity and equality. We will therefore use all our efforts to foster human equality and dignity everywhere and to further the principles of self-determination and non-racialism.

B. The Human Rights Unit within the Commonwealth Secretariat

Another step was taken in 1981, when the Commonwealth Heads of Government, meeting in Melbourne, decided that a Human Rights Unit should be established within the Commonwealth Secretariat. Such a unit was set up in 1985 as a part of the Secretariat's International Affairs Division.[14] Its mandate is to promote human rights among Commonwealth countries by means of education and the provision of information and technical

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(14) Margaret P. Doxey, *The Commonwealth Secretariat and the Contemporary Commonwealth*, Macmillan, 1989, p. 104.

expertise. It also plays a role in ensuring that human rights are adequately considered by other branches of the Secretariat. The investigation of human rights violations and the enforcement of rights are not part of the mandate or likely to become so. Nor are they likely to become part of the mandate of the Secretariat or a separate body charged with that responsibility, despite frequent suggestions that human rights promotion should develop in that fashion within the Commonwealth.

To carry out its responsibilities, the Unit has commissioned various expert studies, such as those on the right to food, the International Human Rights Covenants, the right to development, and human rights and development. The unit also publishes a quarterly newsletter, which facilitates communication among Commonwealth human rights bodies.(15)

The Unit also sponsored the publication of the *Manual on Human Rights Training for Public Officials*, in February 1990. This was commissioned to mark the 40th anniversary of the Universal Declaration of Human Rights. (The research and writing of the manual were conducted by a team of researchers under the auspices of the Human Rights Research and Education Centre at the University of Ottawa.) The manual is a practical document that serves as a tool for training government officials in human rights promotion and protection. It provides an overview of the field of human rights and the principal international human rights documents, then discusses the major human rights themes: individual and collective rights, equality and discrimination, the rights of minorities and aboriginals, refugees, the rights of the child and issues relating to the environment and peace. Suggested readings accompany each topic. The manual is being revised and four special volumes (for prison officials, law enforcement officers, judges and public servants in foreign ministries) are in preparation. Using the manual, the Human Rights Unit has conducted 12 regional workshops for senior public officials on setting up training programs in human rights for government ministries.

The Human Rights Unit has also prepared "Accession Kits" to assist Commonwealth countries to accede to the International Convention on the Elimination of All Forms of Discrimination Against Women, and to the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights. The Unit has developed an

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(15) Reports of the Commonwealth Secretary-General.

extensive training program for national human rights institutions as well as publishing two editions of a *Directory of National Human Rights Institutions in the Commonwealth*. In October 1992, the Unit held a pan-Commonwealth workshop for national human rights bodies of member states.

Finally, the Human Rights Unit organizes conferences to promote human rights. For example, in 1988 the Unit and the Legal Division assisted in sponsoring a Judicial Colloquium in Bangalore to explore the topic "Developing Human Rights Jurisprudence: The Domestic Application of International Human Rights Norms." Senior judges from Asia and the Pacific attended and formulated the 10 principles which have come to be known as The Bangalore Principles. These assert the importance of fundamental rights and freedoms and note with approval the tendency of the judiciary in some common law countries (in which international conventions do not automatically become domestic law) to apply international human rights norms in deciding local cases. Where the domestic law is clear and does not permit a judge to apply the international norm, the principles state that the court should bring the inconsistency or breach to the attention of the appropriate authorities. The principles also urge that judges, practising lawyers and law enforcement officials receive ongoing training in the international dimension of human rights.

Follow-up conferences, attended by most of the Chief Justices of African Commonwealth countries, moved further. At the first, held in Harare in 1989, the participants reaffirmed the importance of incorporating international human rights norms into the domestic laws of all nations. They also emphasized the necessity to educate judges, lawyers and law enforcement officials in human rights developments and recognized the role that non-governmental organizations can play. In December 1991, when they met in Abuja, Nigeria, high-level judicial officials established the Commonwealth Judicial Human Rights Association, an informal body which will communicate information about international and comparative human rights law to judges and lawyers.

C. The 1989 Heads of Government Meeting in Kuala Lumpur

The 1989 meeting of the Commonwealth Heads of Government produced two significant initiatives in the human rights field. The first was the establishment of a High Level Appraisal Group to assess the priorities of the Commonwealth for the 1990s. Canadian Prime Minister Mulroney is a member of this small, representative group, which is chaired by the Prime Minister of Malaysia. The second initiative was the establishment of a Governmental Working Group of Experts on human rights. Eight experts, including a representative from Canada, comprise the committee, set up to review Commonwealth cooperation in the field of human rights.

When the experts presented their report in July 1990, it emphasized the need for long-term goals and commitments. It defined certain operating principles and program areas such as the provision of information, judicial standards, education, training and technical assistance. The report was also made available for consideration by both the High-Level Appraisal Group and by the Heads of Government at their meeting in Harare in 1991.

D. *Put Our World to Rights* (1991)

In August 1991, a group of five Commonwealth non-governmental organizations published *Put Our World to Rights,* a critique of Commonwealth human rights activities to put additional pressure on Commonwealth Heads of Governments to establish a human rights "system." Chaired by Canada's former Minister of External Affairs Flora MacDonald, a group of seven lawyers, professionals and politicians, the report was sponsored by the Commonwealth Journalists Association, the Commonwealth Trade Union Council, the Commonwealth Lawyers Association, the Commonwealth Legal Education Association and the Commonwealth Medical Association. The report strongly criticized the human rights record of some Commonwealth countries and argued that the Commonwealth needed to undertake vigorous promotion and protection of human rights as a central purpose or risk losing relevance. Among its recommendations were that:

- the Commonwealth Heads of Government establish a standing commission to monitor human rights in member countries and publish its findings;

- the Heads of Governments meeting in Harare in October 1991 adopt a declaration setting out the basis for a Commonwealth human rights policy that recognizes the role of non-governmental organizations in the promotion of human rights; and that
- the Commonwealth Secretariat should have a greater role in, and greater resources for, human rights activities (including a special fund for Commonwealth human rights activities and priority for human rights education).(16)

E. The Harare Commonwealth Declaration

At their meeting in Harare in October 1991, the Commonwealth Heads of Government assessed the recommendations that had been put together by the High Level Appraisal group and issued the Harare Commonwealth Declaration establishing the priorities for the Commonwealth during the 1990s. Included in these are a pledge to "work with renewed vigour" to concentrate their activities in several areas connected with the promotion of democracy and human rights. Among these are:

- protection of the fundamental political values of the Commonwealth;
- equality for women;
- provision of universal access to education;
- continuing action to bring about the end of apartheid and the establishment of a free, democratic, non-racial and prosperous South Africa; and
- extending benefits of development within a framework of respect for human rights.

In their communiqué from Harare, the Heads of Government stated that they "reaffirmed their strong collective commitment to the principles of justice and human rights, including the rule of law, the independence of the judiciary, equality for women, and accountable administrations."

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(16) Commonwealth Human Rights Initiative, *Put Our World to Rights: Towards a Commonwealth Human Rights Policy*, London, 1991.

The Heads of Government supported the report and recommendations of the Commonwealth Governmental Working Group of Experts on Human Rights and requested the Secretariat to put greater stress on its activities for promoting human rights. In addition, they recognized the important role of non-governmental organizations. Canada and Gambia volunteered special funds for expanded activities by the Commonwealth Secretariat.to support human rights.

F. Parliamentarians and Commonwealth Human Rights Systems

Perhaps the most significant role that parliamentarians have undertaken is promoting the linkage between human rights and development assistance. Among Commonwealth countries, this relatively recent approach is most advanced in Canada. For donors of development assistance, significant problems remain, including the means to determine and apply human rights principles and criteria, particularly given the scarcity of reliable information.

Canadian parliamentary committees have significantly advanced the case for linking human rights and development assistance and have generally moved ahead of government policy. In 1986, the final report of the Special Joint Committee on Canada's International Relations, *Independence and Internationalism* (the Hockin-Simard report), recommended the creation of an International Centre for Human Rights and Democratic Development, to be funded by official development assistance. Legislation to establish this institute was passed by Parliament in 1988.

The 1987 report of the House of Commons Standing Committee on External Affairs and International Trade, *For Whose Benefit?* (the Winegard report), went further in proposing a necessary link between economic aid and human rights. The Committee concluded that "human rights must be seen as an integral part of development, not as a factor separate from, or incidental to the basic needs of the poor" (p. 26). In 1990, another report by the same committee affirmed with regard to Canada's position on third world debt that "Canadian policies towards developing countries on issues of debt and structural adjustment must reflect Canadian values of social justice, respect for human rights and democratic participation. Our policies

must be coherent, ethically as well as economically responsible. This means that conditions must be applied to Canadian actions to assist debtor countries." The Committee recommended that "respect for human rights, including the right of popular participation in policy decision, ... be a factor in determining eligibility [for official debt relief]. Debt reduction should not end up rewarding corrupt elites, and even less, should it be tied to measures that make the poor worse off."(17)

The Canadian House of Commons established an institutional link between international development and human rights when the Standing Committee on External Affairs and International Trade established a Sub-Committee on Development and Human Rights in 1991. In its first report to the House of Commons, the Sub-Committee picked up on the theme of its predecessors and also recommended that "Canada should make effective use of both the positive and negative leverage resulting from our diplomatic and ODA resources to condemn human rights abuses and the suppression of political pluralism."(18)

CONCLUSION

Although there has been a consistent trend for Commonwealth governments and parliamentarians to become involved in the promotion of democracy and the protection of human rights, the appropriate form for these activities remains a subject for debate. Much remains to be done to implement theoretical and legal rights effectively at the level of domestic and international policy and practice. Should future action continue on an *ad hoc* basis? Should action be directed towards implementing a Commonwealth human rights system? The major drawback of the *ad hoc* activities lies in the risk of deadlock if the various governments fail to agree on a course of action. The South African experience demonstrates this possibility. On

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(17) House of Commons, Standing Committee on External Affairs and International Trade, *Securing Our Global Future: Canada's Stake in the Unfinished Business of Third World Debt*, Ottawa, 1990, p. 24, 27.

(18) House of Commons, Sub-committee on Development and Human Rights of the Standing Committee on External Affairs and International Trade, *Canada, Southern Africa, and the 1990s: Nourishing the Roots of Democracy*, Ottawa, 1992.

the other hand, the ability of the Commonwealth to develop a human rights system is limited by the nature of the Commonwealth itself. Because this is a voluntary grouping of states, and membership does not impose legal obligations, its ability to put enforcement mechanisms in place is strictly circumscribed. This has resulted in criticism that Commonwealth summits, like the Heads of Government meetings in Harare, result in nothing more than vague promises to work on behalf of democracy and human rights. The task of Commonwealth governments and parliamentarians, therefore, is to find a means of combining the effectiveness of *ad hoc* actions with a mechanism that would provide consistent monitoring and the possibility of enforcement.

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